

§ 286.29

rare occasions, a group of requesters acting on concert, is attempting to break a request down into a series of requests for the purpose of avoiding the assessment of fees, the Agency may aggregate any such requests and charge accordingly. One element to be considered in determining whether a belief would be reasonable is the time period in which the requests have occurred. For example, it would be reasonable to presume that multiple requests of this type made within a 30 day period had been made to avoid fees. For requests made over a longer period however, such a presumption becomes harder to sustain and Components should have a solid basis for determining that aggregation is warranted in such cases. Components are cautioned that before aggregating requests from more than one requester, they must have a concrete basis on which to conclude that the requesters are acting in concert and are acting specifically to avoid payment of fees. In no case may Components aggregate multiple requests on unrelated subjects from one requester.

(g) *Effect of the Debt Collection Act of 1982 (5 U.S.C. 5515 note).* The Debt Collection Act of 1982 (5 U.S.C. 5515 note) provides for a minimum annual rate of interest to be charged on overdue debts owed the Federal Government. Components may levy this interest penalty for any fees that remain outstanding 30 calendar days from the date of billing (the first demand notice) to the requester of the amount owed. The interest rate shall be as prescribed in 31 U.S.C. 3717. Components should verify the current interest rate with respective Finance and Accounting Offices. After one demand letter has been sent, and 30 calendar days have lapsed with no payment, Components may submit the debt to respective Finance and Accounting Offices for collection pursuant to 5 U.S.C. 5515 note.

(h) *Computation of fees.* The fee schedule in this subpart shall be used to compute the search, review (in the case of commercial requesters) and duplication costs associated with processing a given FOIA request. Costs shall be computed on time actually spent. Neither time-based nor dollar-based minimum charges for search, review and duplication are authorized. The appropriate

32 CFR Ch. I (7–1–10 Edition)

fee category of the requester shall be applied before computing fees.

(i) *Refunds.* In the event that a Component discovers that it has overcharged a requester or a requester has overpaid, the Component shall promptly refund the charge to the requester by reimbursement methods that are agreeable to the requester and the Component.

§ 286.29 Collection of fees and fee rates.

(a) *Collection of fees.* Collection of fees will be made at the time of providing the documents to the requester or recipient when the requester specifically states that the costs involved shall be acceptable or acceptable up to a specified limit that covers the anticipated costs. Collection of fees may not be made in advance unless the requester has failed to pay previously assessed fees within 30 calendar days from the date of the billing by the DoD Component, or the Component has determined that the fee will be in excess of \$250 (see § 286.28(e)).

(b) *Search time—(1) Manual search.*

Type	Grade	Hourly Rate
Clerical	E1–E9/GS1–GS8	\$20.00
Professional	O1–O6/GS9–GS15	44.00
Executive	ES1–ES6/O7–O10	75.00
Contractor	44.00

(2) *Computer search.* Fee assessments for computer search consists of two parts; individual time (hereafter referred to as human time), and machine time.

(i) *Human time.* Human time is all the time spent by humans performing the necessary tasks to prepare the job for a machine to execute the run command. If execution of a run requires monitoring by a human, that human time may be also assessed as computer search. The terms “programmer/operator” shall not be limited to the traditional programmers or operators. Rather, the terms shall be interpreted in their broadest sense to incorporate any human involved in performing the computer job (e.g. technician, administrative support, operator, programmer, database administrator, or action officer).

Office of the Secretary of Defense

§ 286.30

(ii) *Machine time.* Machine time involves only direct costs of the Central Processing Unit (CPU), input/output devices, and memory capacity used in the actual computer configuration. Only this CPU rate shall be charged. No other machine related costs shall be charged. In situations where the capability does not exist to calculate CPU time, no machine costs can be passed on to the requester. When CPU calculations are not available, only human time costs shall be assessed to requesters. Should DoD Components lease computers, the services charged by the lessor shall not be passed to the requester under the FOIA.

(c) *Duplication.*

Type	Cost per Page (cents)
Pre-Printed material	02
Office copy	15
Microfiche	25
Computer copies (tapes, discs or printouts).	Actual cost of duplicating the tape, disc or printout (includes operator's time and cost of the medium)

(d) *Review time (in the case of commercial requesters).*

Type	Grade	Hourly Rate
Clerical	E1-E9/GS1-GS8	\$20.00
Professional	O1-O6/GS9-GS15	44.00
Executive	ES1-ES6/O7-O10	75.00
Contractor	44.00

(e) *Audiovisual documentary materials.* Search costs are computed as for any other record. Duplication cost is the actual direct cost of reproducing the material, including the wage of the person doing the work. Audiovisual materials provided to a requester need not be in reproducible format or quality.

(f) *Other records.* Direct search and duplication cost for any record not described in this section shall be computed in the manner described for audiovisual documentary material.

(g) *Costs for special services.* Complying with requests for special services is at the discretion of the Components. Neither the FOIA, nor its fee structure cover these kinds of services. Therefore, Components may recover the costs of special services requested by the requester after agreement has been obtained in writing from the re-

quester to pay for one or more of the following services:

(1) Certifying that records are true copies.

(2) Sending records by special methods such as express mail, etc.

[63 FR 65420, Nov. 25, 1998, as amended at 67 FR 31128, May 9, 2002]

§ 286.30 Collection of fees and fee rates for technical data.

(a) *Fees for technical data.* Technical data, other than technical data that discloses critical technology with military or space application, if required to be released under the FOIA, shall be released after the person requesting such technical data pays all reasonable costs attributed to search, duplication and review of the records to be released. Technical data, as used in this section, means recorded information, regardless of the form or method of the recording of a scientific or technical nature (including computer software documentation). This term does not include computer software, or data incidental to contract administration, such as financial and/or management information. DoD Components shall retain the amounts received by such a release, and it shall be merged with and available for the same purpose and the same time period as the appropriation from which the costs were incurred in complying with request. All reasonable costs as used in this sense are the full costs to the Federal Government of rendering the service, or fair market value of the service, whichever is higher. Fair market value shall be determined in accordance with commercial rates in the local geographical area. In the absence of a known market value, charges shall be based on recovery of full costs to the Federal Government. The full costs shall include all direct and indirect costs to conduct the search and to duplicate the records responsive to the request. This cost is to be differentiated from the direct costs allowable under § 286.29 of this subpart for other types of information released under the FOIA.

(b) *Waiver.* Components shall waive the payment of costs required in paragraph (a) of this section, which are greater than the costs that would be